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No. 514

# In the Supreme Court of the United States

OCTOBER TERM, 1968

CLARK E. FINKS AND FRANCIS A. WILLETTE, JR.,
PETITIONERS

*v.*

THE UNITED STATES OF AMERICA

*ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
*Solicitor General,*
*Department of Justice,*
*Washington, D.C. 20530.*

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Petitioners' claim for just compensation is based upon the impounding of their automobiles by the United States Agency for International Development (USAID) in Brazil in order to prevent the sale of those automobiles in violation of treaty agreements, Brazilian customs laws, and Embassy regulations. The facts are set out in full in the opinion of the Court of Claims (Pet. 9–19). In October and November 1963, each of the petitioners, who were then USAID employees, took delivery of a new American automobile in Brazil without payment of that country's substantial import duty, under a diplomatic agreement



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which provided for the waiver of the duties for certain diplomatic personnel and which specified the circumstances in which such automobiles may be resold duty-free in Brazil upon prior request of the American Embassy and approval by the Brazilian Ministry of Foreign Affairs. In August 1964, petitioners became involved in litigation with a Brazilian car dealer who had loaned them money to purchase the automobiles and who claimed ownership of the cars. Thereafter, despite the fact that the automobiles were not eligible for duty-free resale and the Embassy's advice that it would not approve any request to Brazilian authorities for such resale, petitioners openly sought to sell the automobiles without payment of the duty. In October 1964, USAID officials impounded the automobiles, and petitioners were advised that the cars would be released to them if they agreed that they would not attempt to sell them in violation of Brazilian law.[1] Petitioners, who were obviously motivated by the difference between the $3,500 purchase price of the automobiles and their $12,000 market value in Brazil, refused to give such assurances. USAID retained custody of the automobiles after petitioners resigned their positions and returned to the United States, and the automobiles were ultimately turned over to the Brazilian car dealer, who prevailed in his civil suit against petitioners and who paid the import duties.

[1] The American Ambassador also advised petitioners that he would arrange to have the automobiles returned to the United States at government expense if they so desired.

The Court of Claims correctly held that the impounding of petitioners' automobiles in the circumstances of this case was not a compensable taking under the Fifth Amendment. See *United States* v. *Dickinson*, 331 U.S. 745; *United States* v. *Central Eureka Mining Co.*, 357 U.S. 155. At all relevant times, the automobiles remained subject to petitioners' disposition—for their own personal use or for sale in accordance with Brazilian law and the treaty agreements. The only interest of which petitioners were deprived was the opportunity to sell the vehicles unlawfully. Compare *General Motors Acceptance Corp.* v. *United States*, 286 U.S. 49.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

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